IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.282 of 1997
Reserved on: November 14, 2007
Decided on:November 16, 2007.

H.P.Housing & Urban Devp. Authority .....Appellant.

VERSUS

Narinder Puri .....Respondent.

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant: **Mr.C.N.Singh, Advocate.**

For the Respondent: **Mr.H.C.Sharma, Advocate.**

Kuldip Singh, Judge

The Himachal Pradesh Housing and Urban Development Authority has filed this appeal against the judgment, decree dated 16.6.1997 passed by learned District Judge, Shimla in Civil Appeal No.123-S/13 of 1993 reversing the judgment, decree dated 28.8.1993 passed by learned Senior Sub Judge, Shimla in Civil case No. /1 of 1991.

2. The facts, in brief, are that Himachal Pradesh Housing Board, predecessor of Himachal Pradesh Housing and Urban Development Authority filed suit against respondent for permanent prohibitory and mandatory injunction regarding the alleged

[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

unauthorized construction raised and threatened to be raised by respondent in L.I.G. House No.44 which was purchased by respondent from appellant under hire purchase tenancy agreement under which possession of the house along with plot was handed over to respondent on 2.9.1982. It has been alleged that as per condition in hire purchase tenancy agreement the respondent hirer is prohibited from making any alterations, additions in the property without prior permission in writing of the owner i.e. appellant along with sanction or permission in writing of the local authority. The appellant has alleged that respondent has violated this condition of the agreement and raised unauthorized construction over the constructed portion and in open space. The appellant has not granted any permission to the respondent for raising the construction. On these grounds, the suit was filed.

3. The respondent contested the suit and in the written statement admitted the allotment of the house. It has been pleaded that seller has only limited right in case there is default of payment. The construction on first floor on a single storey building is provided in the regulations and permission is a formality which cannot be withheld. The appellant itself has constructed four storeyed building at the same place and cannot decline the permission to the respondent under the regulations. The first floor was constructed by appellant only after the costs for issuing the drawing was accepted. It has been denied that construction was raised in 1991. There is no violation of the

regulations in raising the construction. It has been denied that any construction has been raised on the vacant space. The objections of maintainability, estoppel, lack of cause of action were also pleaded. The learned Senior Sub Judge decreed the suit on 28.8.1993 and decree of permanent prohibitory and mandatory injunction was passed. The respondent was restrained from making any further construction / additions to House No.44 and also on vacant land with a direction to demolish the additional construction raised by him on House No.44 as shown in plan Ext.PW-1/E.

4. The respondent filed appeal against the decision dated 28.8.1993 which has been allowed by learned District Judge on 16.6.1997. Hence, the appellant is in second appeal in this Court which has been admitted on the following substantial questions of law:-

i) *Whether the mere fact that during the pendency of the case, the Housing Board had transferred the ownership rights to the respondent would debar the Housing Board from claiming the demolition of the premises especially when the sale deed clearly mention that the allottee could not raise any construction without the express permission of the Housing Board?*

ii) *Whether the learned lower appellate Court has totally misread the documents conveyance*

deed and has failed to consider the express provisions of the said conveyance deed?

5. I have heard the learned counsel for the parties and gone through the record. Mr.C.N.Singh, learned counsel for the appellant, has submitted that no doubt the appellant has sold the house to the respondent who is now owner in possession thereof but as per sale deed also respondent cannot raise any construction over constructed portion and vacant space without the permission of the appellant. He has submitted that learned District Judge has mis-construed the material on record and has erred in decreeing the suit. On the contrary, Mr.Sharma, learned counsel for the respondent, has supported the impugned judgment and decree.

SUBSTANTIAL QUESTIONS OF LAW NO.1 & 2:

6. The substantial questions of law No.1 and 2 are interconnected and, therefore, both of them are being disposed of collectively. The learned counsel for the respondent has submitted that construction was raised by respondent before the filing of the suit. The appellant did not object at the time of raising construction, therefore, appellant is estopped from questioning the construction. It is also the case of the respondent that he has independent right to raise construction being the owner of the L.I.G. House No.44 and appellant has no right to raise any grievance.

7. PW-1, Harbans Lal, Executive Engineer of the appellant, has stated that unauthorized construction raised by respondent shown

in plan Ext.PW-1/E could have been raised by the respondent after obtaining permission from the appellant. The hire purchase tenancy agreement between appellant and respondent is Ext.PW-1/A and vide Clause 2(g) of the said agreement the hirer shall not make or permitted to be made any additions or alternations in the property without the permission in writing of the owner as well as of local authority concerned. In the present case, the case of the appellant is that permission has not been granted by the appellant to respondent for carrying out additions and alterations in L.I.G. House No.44 and there is violation of Clause 2(g) of the agreement. On this ground, the appellant has sought decree of permanent prohibitory injunction as well as mandatory injunction against the respondent. It is not the case of the appellant that respondent has taken no permission from the concerned local authority for raising construction in the house. I have perused hire purchase tenancy agreement Ext.PW-1/A which is on the trial Court file. This document is of 9 leaves, 4 leaves of this document have pagination from 37 to 40 and remaining 5 leaves have pagination from 55 to 59 but as a whole constitute one document.

8. The learned counsel for the parties, during the course of hearing of the appeal, have agreed on the fact that respondent now has become the owner of the L.I.G. House No.44 for which a sale deed has been executed by the appellant in favour of the respondent. Thus, now respondent is the owner of the house and not the appellant. The appellant could use Clause 2(g) of the agreement till it was owner

of the house. This clause was kept in the agreement purposely as the respondent was hirer and appellant owner of the house. The appellant wanted that no alteration etc. should be carried out in the house without its permission, therefore, Clause 2(g) was kept in the agreement. The Clause 2(g) of agreement Ext.PW-1/A is now not available to the appellant against the respondent. Now, the rights of the parties are governed by the sale deed which has been executed by the appellant in favour of the respondent regarding the house. The learned counsel for the appellant has submitted that even in the sale deed there is a clause that no additions or alterations can be carried out by respondent in L.I.G. House No.44 but no such sale deed has been proved on record by the appellant. Therefore, in absence of proof of any right in favour of appellant under the sale deed restricting carrying out additions and alterations in L.I.G. House No.44, the appellant has no right to question the construction carried out by the respondent in the house. The respondent is the owner of the house and he has every right which normally an owner has regarding his property. It has not been pointed out which document has been misread by learned lower appellate Court. The appellant has failed to prove any existing right in L.I.G. House No.44 so as to claim prohibitory and mandatory injunction against the respondent for carrying out the addition and alteration in that house. No case for interference has been made out. The substantial questions of law

No.1 and 2 are decided against the appellant and in favour of respondent.

9. No other point was urged.

10. The result of the above discussion, the appeal is dismissed.

November 16, 2007. ***(Kuldip Singh)***
(soni) ***Judge***